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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:04-CV-570(TC)
v.	)	
	)	CONSENT DECREE BETWEEN
BEEHIVE BARREL AND DRUM, INC.	)	UNITED STATES AND DEFENDANTS
d/b/a CASCADE COOPERAGE, INC., a	)	ARTHUR AND ADRIA ROSSOMONDO
Dissolved Utah Corporation, et al.,	)	AND BEEHIVE BARREL AND DRUM, INC.
	)	D/B/A CASCADE COOPERAGE, INC.
Defendants.	)	

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**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at an industrial property located at 1066 South Redwood Road, Salt Lake City, Utah ("Service First Site" or "Site").

B. The Parties to this Consent Decree are Plaintiff United States and Defendants Arthur Rossomondo, Adria Rossomondo, and Beehive Barrel and Drum, Inc. d/b/a Cascade

Cooperage, Inc. ("Settling Defendants").

C. The Settling Defendants that have entered into this Consent Decree do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

D. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred in connection with the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay only the amount specified in Section V.

E. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants Arthur Rossomondo and Adria Rossomondo and their heirs, successors and assigns. In addition, this Consent Decree is binding upon Beehive Barrel and Drum, Inc. d/b/a Cascade Cooperage, Inc. ("Cascade Cooperage") and any successor to it. Any change in ownership or corporate or other legal status for Cascade Cooperage, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Financial Information" shall mean the information and documents, including insurance information provided to Plaintiff by Settling Defendants.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and Settling Defendants.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Settling Defendants" shall mean Arthur Rossomondo, Adria Rossomondo, and Beehive Barrel and Drum, Inc. d/b/a Cascade Cooperage, Inc.

n. "Site" shall mean the industrial property located at 1066 South Redwood Road, Salt Lake City, Utah.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. PAYMENT OF RESPONSE COSTS**

4. Payment of Response Costs. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay the EPA Hazardous Superfund the principal sum of \$325.00. Payment shall be made by certified check or cashier's check and made payable to the "U.S. Department of Justice", referencing EPA Region 8 and Site Spill ID Number 08 7Y, DOJ Case Number 90-11-3-08170, and Case Civil Action 2:04-CV-00570(TC). Settling Defendants shall send the check to:

Office of United States Attorney  
Financial Litigation Unit  
185 South State, Suite 400  
Salt Lake City, Utah 84111

5. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to:

Docket Clerk (8RC)  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202

Financial Management Officer (8TMS-F)  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202

6. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

7. Prior to execution of this Consent Decree by the Parties, Settling Defendants took certain steps to determine whether the portion of the Site which they owned was covered by pollution or environmental insurance that would provide for reimbursement of the response costs incurred by the United States in connection with the clean-up of the Site. The actions taken by Settling Defendants, which were reported by Settling Defendants to the United States, failed to identify any insurance coverage that could be considered for reimbursement of the United States' response costs. If subsequent to execution of the Consent Decree by the Parties, Settling Defendants determine or receive information that the portion of the Site which they owned is/was covered by insurance of any type of pollution or environmental insurance, Settling Defendants shall take the following actions:

a. Within ten days of making such determination or receiving such information, Settling Defendants shall provide written notice to EPA, and such notice shall include all information known by Settling Defendants at the time regarding any actual or possible insurance coverage.

b. Simultaneous with providing EPA notice, as provided under sub-Paragraph a., Settling Defendants shall submit a written request to the insurance company to: (i) identify the terms of the insurance coverage and (ii) obtain a copy of each applicable policy. Within ten days after receipt of any response from the insurance company, Settling Defendants shall notify EPA of the insurance company's response, including providing copies of any written correspondence and documents received. After review of any information provided by Settling Defendants, EPA shall advise Settling Defendants in writing whether Settling Defendants shall be required to

submit a claim for any response costs incurred by the United States regarding the Site which have not been paid. If EPA determines that a claim should be filed, EPA shall also provide Settling Defendants a written statement of the amount of any unreimbursed response costs.

c. If EPA determines that a claim should be filed and so advises Settling Defendants, they shall, within ten days after receipt of EPA's request for the filing of a claim, submit a claim for payment to the insurance company for the full amount of the United States' unreimbursed response costs. A copy of such claim shall be provided to EPA.

d. Within ten days upon receipt of any insurance proceeds, Settling Defendants shall pay 85% of such proceeds to EPA and shall retain the remaining 15% of such proceeds. Copies of all documents received by Settling Defendants related to submission of the claim and payment of any proceeds shall be provided to EPA within ten days of receipt of any such documents by Settling Defendants. Within five days after Settling Defendants' receipt of any information from an insurance company that the claim will be paid in full or part, Settling Defendants shall submit a written request to EPA to obtain instructions on how any required payment should be made to EPA.

## **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

8. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 4 (Payment of Response Costs) or Paragraph 7 (Insurance Proceeds) by the due date, Interest shall continue to accrue on the unpaid balance or amount due through the date of payment.

9. Stipulated Penalty.

a. If the amount due under Paragraph 4 or Paragraph 7 is not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$25.00 per day that the amount due under Paragraph 4 or 7 is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, Service First Barrel and Drum Site, EPA Region 8 and Site Spill ID Number 08 7Y, DOJ Case Number 90-11-3-08170, and Case Civil Action 2:04-CV-00570(TC). Settling Defendants shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency  
EPA Region 8  
Mellon Bank  
Attention: Superfund Accounting  
Lockbox 360859  
Pittsburgh, PA 15251-6859

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions) and to each person identified in Paragraph 5.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA



has notified Settling Defendants of the violation(s) or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or, in the event of act of noncompliance, the day a violation occurs and shall continue to accrue through the date of payment or the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

## **VII. COVENANT NOT TO SUE BY PLAINTIFF**

14. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue is also conditioned upon compliance with Paragraph 7 and the veracity and completeness of the Financial Information provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 22 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

## **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue Plaintiff in Paragraph 14. Notwithstanding any other provision of this Consent Decree,

the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

16. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 29, is false or, in any material respect, inaccurate.

#### **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§

9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

18. Except as provided in Paragraph 20 (Waiver of Claims) and Paragraph 24 (Waiver of Claim-Splitting Defenses), this covenant not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 15(c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

19. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

20. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that any Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendants.

## **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

21. Except as provided in Paragraph 20, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 20, the Parties expressly reserve any and all rights, defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken and to be taken and all response costs incurred and to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

23. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees

that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

#### **XI. ACCESS TO INFORMATION**

25. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, insurance coverage for the Site, or other documents or information related to the Site.

26. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or

all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

27. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering

data, or any other documents or information evidencing conditions at or around the Site.

## **XII. RETENTION OF RECORDS**

28. Until 7 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in that person's possession or control, or which come into that person's possession or control, that relate in any manner to response actions taken at the Site, the liability of any person under CERCLA with respect to the Site, insurance policies/coverage related to the Site, any dealings with the any Utah environmental agency related to the Site, sale of the Site by the Settling Defendants in 1992, or payments to the Settling Defendants related to the sale, regardless of any corporate retention policy to the contrary.

29. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it/he/she has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it/him/her regarding the Site;

b. fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) or requested as part of any settlement discussions between the United States and Settling Defendants; and

c. submitted to EPA financial information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendants execute this Consent Decree.



### **XIII. NOTICES AND SUBMISSIONS**

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Reference Number 90-11-3-1604/1

As to EPA:

Wendy Silver (8ENF-L)  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202

As to Settling Defendants:

Arthur/Adria Rossomondo  
2302 NE 232<sup>nd</sup> Avenue  
Camas, WA 98607

Brandon Baxter  
Bearnson & Peck, L.C.

Attorneys At Law  
74 West 100 North  
Logan, Utah 84321

#### **XIV. RETENTION OF JURISDICTION**

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XV. INTEGRATION**

32. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

#### **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

33. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

## **XVII. SIGNATORIES/SERVICE**

35. Each undersigned representative of a Settling Defendant to this Consent Decree and the Chief or Deputy Chief of the Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

37. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants may not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree and the following occur: (a) Settling Defendants file a motion seeking to set aside the default previously entered in the case against Settling Defendants and the Court grants such motion over any opposition by Plaintiff and (b) the Court allows the filing of an answer to the complaint.

**XVIII. EFFECTIVE DATE**

38. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

**XIX. FINAL JUDGMENT**

39. On March 1, 2005, the clerk of the court entered a default as to each of the Settling Defendants. In light of this settlement, Plaintiff and Settling Defendants have agreed that the default should be vacated. The Court hereby ORDERS that the default entered against Settling Defendants (Arthur and Adria Rossomondo and Beehive Barrel and Drum, Inc. d/b/a Cascade Cooperage, Inc.) is VACATED. The Parties agree that this provision regarding vacation of the previously entered default shall apply only if the Court approves the Consent Decree.

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2005 .

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Beehive Barrel and Drum, Inc., C.A. No. 2:04-CV-570(TC), relating to the Service First Barrel and Drum Superfund Site, located at 1066 South Redwood Road, Salt Lake City, Utah.

FOR THE UNITED STATES OF AMERICA:


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W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

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NATHANIEL DOUGLAS  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

 SHARON KERCHER, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. Environmental Protection Agency  
Region 8  
999 18<sup>th</sup> Street  
Denver, CO 80202

MICHAEL T. RISNER, Director  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. Environmental Protection Agency  
Region 8  
999 18<sup>th</sup> Street  
Denver, CO 80202

WENDY SILVER  
Enforcement Attorney  
U.S. Environmental Protection Agency  
Region 8  
999 18<sup>th</sup> Street  
Denver, CO 80202

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Beehive Barrel and Drum, Inc., C.A. No. 2:04-CV-570(TC), related to the Service First Barrel and Drum Superfund Site, located at 1066 South Redwood Road, Salt Lake City, Utah.

FOR SETTLING DEFENDANTS:

\_\_\_\_\_  
ARTHUR ROSSOMONDO  
2302 NE 232<sup>nd</sup> Avenue  
Camas, WA 98607    ^

\_\_\_\_\_  
ADRIA ROSSOMONDO  
2302 NE 232<sup>nd</sup> Avenue  
Camas, WA 98607

\_\_\_\_\_  
BEEHIVE BARREL AND DRUM DBA  
CASCADE COOPERAGE, INC.  
1955 N.W. Eleven Mile Drive  
Gresham, OR 97030

APPROVED AS TO FORM:

\_\_\_\_\_  
~~BRANDON J. BAXTER~~  
Attorney for Settling Defendants  
74 W. 100 N.  
Logan, UT 84321

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:            Brandon J. Baxter  
                    Bearnson & Peck, L.C.  
Address:        74 West 100 North  
                    Logan, UT 84321